1953

Title 57 Chapter 03-07: Recording Conveyances to Townsites - 1953

Utah Code Annotated

CHAPTER 3

RECORDING CONVEYANCES

57-3-1. Certificate of acknowledgment or of proof of execution a prerequisite.—A certificate of the acknowledgment of any conveyance, or of the proof of the execution thereof as provided in this title, signed and certified by the officer taking the same as provided in this title, shall entitle such conveyance, with the certificate or certificates aforesaid, to be recorded in the office of the recorder of the county in which the real estate is situated.

History: R. S. 1898 & C. L. 1907, § 1999; C. L. 1917, § 4899; R. S. 1933 & C. 1943, 78-3-1.

Comparable Provision.

Iowa Code 1950, § 558.42 (instrument affecting real estate is not deemed lawfully recorded unless previously acknowledged or proved in manner provided by statute; affidavits need not be thus acknowledged).

Cross-Reference.

Documents sent by telegraph or telephone may be recorded, 69-1-2.

1. Who may take acknowledgment.

An acknowledgment taken by mortgagee himself as a notary public is void, and renders mortgage unrecordable. Norton v. Fuller, 68 U. 524, 251 P. 29.

If acknowledgment is taken before officer disqualified to act, certificate is ineffectual. Crompton v. Jenson, 78 U. 55, 1 P. 2d 242, following Norton v. Fuller, 68 U. 524, 251 P. 29.

Decisions from other Jurisdictions— Iowa.

The county recorder cannot arbitrarily refuse to record instruments which are in proper form and eligible to record under the recording acts, where a reasonable request for recording is made and the fee is duly tendered. Weyrauch v. Johnson, 201 Iowa 1197, 208 N. W. 706.

Collateral References.

Deeds⇨81.
26 C.J.S. Deeds § 73.

Certificate of acknowledgment as prerequisite, 45 Am. Jur. 452, Records and Recording Laws § 60.

Photostatic or other method of recording instrument, 57 A. L. R. 159.

Presumption or burden of proof as to whether or not instrument affecting title to property is recorded, 53 A. L. R. 668.

Recording of instrument purporting to affect title as slander of title, 9 A. L. R. 931.

Right of abstracter or insurer of title to inspect or make copies of public records, 80 A. L. R. 760.

Right of executor or administrator of insolvent estate to take advantage of failure to record, file, or refile conveyance or mortgage executed by his decedent, 91 A. L. R. 299.

Right of one claiming through heir, devisee, or personal representative to protection against unrecorded conveyance or mortgage by ancester or testator, 65 A. L. R. 360.

Rule which makes priority of title depend upon priority of record as applied to record of later instrument in second chain of title which antedates record of original instrument in first chain, record of which, however, antedated record of original instrument in second chain, 133 A. L. R. 886.

Validity and effect, as to previously recorded instrument, of statute which places or changes time limit on effectiveness of record of mortgages or other instruments, 133 A. L. R. 1325.

57-3-2. Record imparts notice.—Every conveyance, or instrument in writing affecting real estate, executed, acknowledged or proved, and certified, in the manner prescribed by this title, and every patent to lands within this state duly executed and verified according to law, and every judgment, order or decree of any court of record in this state, or a copy thereof, required by law to be recorded in the office of the county recorder shall, from the time of filing the same with the recorder for record, impart notice to all persons of the contents thereof; and subsequent purchasers, mortgagees and lienholders shall be deemed to purchase and take with notice.

History: R. S. 1898 & C. L. 1907, § 2000; C. L. 1917, § 4900; R. S. 1933 & C. 1943, 78-3-2.

Comparable Provisions.

Deering's Cal. Civ. Code, § 1213; Idaho Code 1947, § 55-811; Mont. Rev. Codes 1947, § 73-201 (recorded conveyance, acknowledged or proved, and certified, from time it is filed for record, is constructive notice of contents to subsequent purchasers and mortgagees).

Cross-References.

Judgment record, recording of, 17-21-11.
Probate decrees, recording, 75-14-16.
Recording as necessary to impart notice, 57-1-6.

1. Words and phrases defined.

There is nothing in this or the following section which specifically defines what is meant by the word "recorded." Boyer v. Pahvant Mercantile & Investment Co., 76 U. 1, 7, 287 P. 188.

2. Necessity for recordation.

Ordinarily a conveyance of land is valid between the parties, and as to all parties having actual notice thereof, without being recorded. Tarpey v. Deseret Salt Co., 5 U. 205, 210, 14 P. 338.

3. Improper or defective recordation.

A deed recorded in a mortgage record, and conversely a mortgage recorded in a deed record, is not constructive notice, because an intending purchaser will not look in such a book for such an instrument. Drake v. Reggel, 10 U. 376, 385, 37 P. 583.

This section does not convey constructive notice of the contents of an instrument which is not entitled by the statute to be recorded, because such an instrument is not legally of record. Doris Trust Co. v. Quermbach, 103 U. 120, 133 P. 2d 1003.

4. Operation and effect of recordation.

The record is only the prima facie evidence of the facts therein stated. Tarpey v. Deseret Salt Co., 5 U. 205, 211, 14 P. 338.

5. Recordation as notice.

One who deals with real property is charged with notice of what is shown by the records of the county recorder of the county in which the real property is situated. Crompton v. Jenson, 78 U. 55, 70, 1 P. 2d 242.

6. What constitutes notice.

Where purchasers of real estate had such notice of adverse claims of plaintiffs as would put reasonable person upon inquiry to ascertain what interest was, they took subject to any equities or interest that plaintiffs had in premises, though such interest was not recorded as required by this section. Gappmayer v. Wilkenson, 53 U. 236, 177 P. 763.

7. Record notice as starting running of statute.

Where action to set aside conveyances, consideration for which were stated to be for one dollar and other good and valuable consideration, was not brought until seven years after conveyances were made and recorded, action was barred by three-year statute of limitations, since discovery was made, or situation was such as to furnish full opportunity for the discovery of fraud, if any existed, more than three years before bringing of the action, and limitation statute began to run from time reasonably prudent person would have investigated the other valuable consideration and discovered the falsity, if any. Smith v. Edwards, 81 U. 244, 256, 17 P. 2d 264.

8. Land patent.

Record of patent is admissible in evidence when record shows that such patent was duly executed and verified as provided by law. Tate v. Rose, 35 U. 229, 99 P. 1003.

9. Priorities.

Lien for all of materials, furnished by single lien claimant, on continuous, open,

running account, for purpose of developing and operating mine, held prior to trust deed executed by mining company, and recorded, between times when materials were first and last furnished. Fields v. Daisy Gold Min. Co., 25 U. 76, 69 P. 528 (Baskin, J., dissenting); Salt Lake Hardware Co. v. Fields, 69 P. 1134, not officially reported (Baskin, J., dissenting).

The matter of priority between successive mortgages is governed by general principles of mortgage law. This is true as to purchase money mortgages. State v. Johnson, 71 U. 572, 268 P. 561.

Decisions from other Jurisdictions.

— California.

Mere fact that an instrument has been recorded does not give constructive notice thereof unless there is some statute authorizing or permitting such instrument to be placed of record and at the same time making the effect of such recording constructive notice. Dreifus v. Marx, 40 Cal. App. 2d 461, 104 P. 2d 1080.

— Montana.

A mortgage is a conveyance within meaning of recording acts. Angus v. Mariner, 85 Mont. 365, 278 P. 996.

Collateral References.

Vendor and Purchaser⇐231(1).

66 C.J. Vendor and Purchaser § 968.

Records as notice, 45 Am. Jur. 422, Records and Recording Laws § 8.

Failure properly to index conveyance or mortgage of realty as affecting constructive notice, 63 A. L. R. 1057.

Fraudulent misrepresentation or concealment by a contracting party concerning title to property or other subjects which are matters of public record, 33 A. L. R. 853.

Grantee or mortgagee by quitclaim deed or mortgage in quitclaim form as within protection of recording laws, 59 A. L. R. 632.

Improper insertion or omission of middle initial of one's name as affecting constructive notice from public record, 122 A. L. R. 909.

Liability of recording officer for mistakes or defects in respect to records, 94 A. L. R. 1303.

Neglect or fault of recording or filing officer as affecting consequences of failure properly to record or file instrument affecting property, 70 A. L. R. 595.

Omission of amount of debt in mortgage or in record thereof (including general description without stating amount) as affecting validity of mortgage, its operation as notice, or its coverage with respect to debts secured, 145 A. L. R. 369.

Record as charging one with constructive notice of provisions of extrinsic instrument referred to in the recorded instrument, 82 A. L. R. 412.

Record of deed or contract for conveyance of one parcel with covenant or easement affecting another parcel owned by grantor as constructive notice to subsequent purchaser or encumbrancer of latter parcel, 16 A. L. R. 1013.

Record of deed to cotenant as notice to other cotenants of adverse character of grantee's possession, 121 A. L. R. 1411.

Record of instrument without acknowledgment or insufficiently acknowledged as notice, 72 A. L. R. 1039.

57-3-3. Effect of failure to record.—Every conveyance of real estate hereafter made, which shall not be recorded as provided in this title, shall be void as against any subsequent purchaser in good faith and for a valuable consideration of the same real estate, or any portion thereof, where his own conveyance shall be first duly recorded.

History: R. S. 1898 & C. L. 1907, § 2001; C. L. 1917, § 4901; R. S. 1933 & C. 1943, 78-3-3.

Comparable Provisions.

Deering's Cal. Civ. Code, § 1214; Idaho Code 1947, § 55-812 (conveyance of real property, other than lease for term not exceeding one year, is void as against subsequent purchaser or mortgagee in good faith and for valuable consideration, whose conveyance is first duly recorded; California provision also contains the following: "and as against any judgment affecting the title, unless such conveyance shall have been duly recorded prior to the record of notice of action").

Iowa Code 1950, § 558.41 (no instrument affecting real estate is of any validity against subsequent purchasers for valuable consideration, without notice, unless filed in office of recorder of county in which same lies).

Montana Rev. Codes 1947, § 73-202 (conveyance of real property, other than lease for term not exceeding one year, is void against subsequent purchaser or encumbrancer, including assignee of mortgage, lease, or other conditional estate, in good faith and for valuable considera-

tion, whose conveyance is first duly recorded).

1. Words and phrases defined.

This section does not define what is meant by the word "recorded." Boyer v. Pahvant Mercantile & Investment Co., 76 U. 1, 7, 287 P. 188.

Mortgage lien is included in term "conveyance" as used in this section, mortgagee is purchaser, and law of priority of record applies to mortgages. Federal Land Bank of Berkeley v. Pace, 87 U. 156, 48 P. 2d 480, 102 A. L. R. 819.

2. Effect of failure to record.

Where after mortgage was executed on certain tract of land, owner executed deed to grantee on property not included in mortgage, which deed was not recorded, decree in action to foreclose mortgage on tract of land, including part conveyed to grantee was not binding on grantee who was not party to such action. Federal Land Bank of Berkeley v. Pace, 87 U. 156, 48 P. 2d 480, 102 A. L. R. 819.

3. Priority.

Innocent purchaser for value without notice of previous conveyance, who first records his conveyance, takes preference over prior unrecorded conveyance. McGarry v. Thompson, 114 U. 442, 201 P. 2d 288, involving priority as between assignments of application to appropriate unappropriated public water under 73-3-18, citing Wells, Fargo & Co. v. Smith, 2 U. 39, aff'd Neslin v. Wells, Fargo & Co., 104 U. S. 428, 26 L. Ed. 802. (See especially dissenting opinion by Wolfe, J., wherein this section is discussed.)

Decisions from other Jurisdictions.

— California.

That a deed conveys merely "the right, title and interest" of the grantor does not prevent the grantee from being a purchaser for a valuable consideration, without notice, within the recording laws, so as to be protected from unrecorded instruments affecting the title to the property of which he had no notice. Beach v. Faust, 2 Cal. 2d 290, 40 P. 2d 822.

— Iowa.

A judgment creditor is not a subsequent purchaser for value of land, within meaning of recording laws. Cumming v. First Nat. Bank of Sigourney, 199 Iowa 667, 202 N. W. 556.

Recording is not essential to the validity of a deed as between the original parties, the statute as to recording being for the benefit of subsequent purchasers for value. Hoyne v. Iowa Title & Loan Co., 219 Iowa 278, 257 N. W. 799.

A judgment creditor is not a purchaser under the Recording Act. Brauch v. Freking, 219 Iowa 556, 258 N. W. 892.

— Montana.

Mortgagee would not be permitted to deny existence of a mortgage prior to his own, of which he had notice by the very terms of his own mortgage, inasmuch, if he had inquired, the means of information being at his command, he could have learned the facts concerning the first mortgage, to which his mortgage was expressly made subject. Angus v. Mariner, 85 Mont. 365, 278 P. 996.

Presumption and burden of proof as regards good faith and consideration on part of purchaser or one taking encumbrance subsequent to unrecorded conveyance or encumbrance, 107 A. L. R. 502.

Purchase-money mortgage as within provision of statute defeating or postponing lien of unrecorded or unfiled mortgage, 137 A. L. R. 571, 168 A. L. R. 1164.

Right of one otherwise protected by recording law against prior unrecorded deed or mortgage as affected by fact that all or part of the consideration was unpaid at the time he received notice, actual or constructive, of the prior instrument, 109 A. L. R. 163.

Right of vendee under unrecorded executory land contract as against subsequent deed or mortgage executed by, or judgment rendered against vendor, 87 A. L. R. 1505.

Collateral References.

Vendor and Purchaser⇐233.

66 C.J. Vendor and Purchaser § 1006.

Failure to record, 45 Am. Jur. 502, Records and Recording Laws § 140 et seq.

57-3-4. Certified copies entitled to record in another county—Effect.— Whenever an original instrument in writing is of record in the office of the county recorder of any county, a copy of the record of such instrument, certified by the county recorder of such county, may be recorded in the office of the county recorder of any other county; and the recording of any such certified copy in the office of the county recorder of such other county, whether done heretofore or hereafter, shall have the same

force and effect as if the original instrument had been recorded in such other county.

History: C. L. 1917, § 4902; R. S. 1933 & C. 1943, 78-3-4.

Collateral References.

Deeds⇨81.

26 C.J.S. Deeds § 73.

57-3-5. Mortgages—Assignment of—Effect of recordation.—The recording of an assignment of a mortgage shall not in itself be deemed notice of such assignment to the mortgagor, his heirs or personal representatives so as to invalidate any payment made by them or either of them to the mortgagee.

History: R. S. 1898 & C. L. 1907, § 2002; C. L. 1917, § 4903; R. S. 1933 & C. 1943, 78-3-5.

1. Applicability of section.

This section did not apply to constitute payments, made by mortgagor to mortgagee's business successor, a credit on claim of mortgagee's assignee, since business successor was not mortgagee. Smith v. Jarman, 61 U. 125, 211 P. 962.

2. Mortgage to secure note.

In action to foreclose mortgage securing negotiable note by assignee of mortgagee, payments made to business successor of mortgagee could not be set off as a credit notwithstanding this section, since when mortgage is given to secure a negotiable note, mortgage follows such instrument as an incident, and in view of former section 104-3-2 payments on such note must be made to party lawfully entitled thereto. Smith v. Jarman, 61 U. 125, 211 P. 962.

Collateral References.

Mortgages⇨249(2).

59 C.J.S. Mortgages § 373.

Assignment of mortgages, 45 Am. Jur. 444, Records and Recording § 43.

Recording laws as applied to assignments of mortgages on real estate, 104 A. L. R. 1301.

57-3-6. Discharge by certificate.—A cancellation or discharge of a mortgage or deed of trust may be substantially in the following form:

CERTIFICATE OF DISCHARGE

This certifies that a (mortgage or deed of trust, as the case may be) from ..... to ....., dated ....., 19....., and recorded in book ..... of ..... on page ....., is hereby cancelled and discharged.

.....

Signed in the presence of

.....

Recorder of ..... County.

Recorded....., 19....., at .....m.

....., County Recorder.

Such cancellation or discharge shall be entered in a book kept for that purpose, and signed by the mortgagee or trustee, his attorney in fact, executor, administrator or assigns in the presence of the recorder or his deputy, who shall subscribe the same as a witness, and such cancellation or discharge shall have the same effect as a deed of release duly acknowledged and recorded.

History: R. S. 1898 & C. L. 1907, § 2004; C. L. 1917, § 4905; R. S. 1933 & C. 1943, 78-3-6.

Cross-Reference.

Recorder's fees, 21-2-3.

1. Conclusiveness of entry.

Marginal entry, whereby mortgage was discharged of record and secured indebtedness was declared "fully paid," held not of such formal and solemn character as to be beyond power of contradiction by parol evidence on point that, at time it was made, secured, indebtedness actually had not been "fully paid." Thompson v. Avery, 11 U. 214, 39 P. 829.

Collateral References.

Mortgages⊂=309(3).
59 C.J.S. Mortgages § 458.
Payment, satisfaction, and discharge, 36 Am. Jur. 890, Mortgages § 406 et seq.

57-3-7. Discharge of liens by marginal entry.—Any mortgage or deed of trust to secure the payment of a sum of money, or any mechanics' or other lien, or any contract, agreement or bond for the sale of real estate, that has been or may hereafter be recorded may be discharged by an entry in the margin of the record thereof, signed by the mortgagee or trustee, or claimant under the lien, or the party or parties in interest under such contract, agreement or bond, or their personal representatives or assignees, stating the satisfaction of the mortgage, deed of trust, lien or contract, in the presence of the recorder or his deputy, who shall subscribe the same as a witness, and such entry shall have the same effect as a deed of release duly acknowledged and recorded.

History: R. S. 1898 & C. L. 1907, § 2005; C. L. 1917, § 4906; R. S. 1933 & C. 1943, 78-3-7.

1. Deed of trust.

A deed of trust to raise a fund to pay a debt cannot be released on the margin of the record, as is provided by this section in case of a trust deed given as security for a debt. Dupee v. Rose, 10 U. 305, 309, 37 P. 567.

Collateral References.

Mortgages⊂=314.
59 C.J.S. Mortgages § 470.

One advancing money to discharge mortgage or lien at request of a cotenant as entitled to subrogation to encumbrance discharged, 140 A. L. R. 1295.

57-3-8. Failure to discharge after satisfaction—Liability.—If the mortgagee fails to discharge or release any mortgage after the same has been fully satisfied, he shall be liable to the mortgagor for double the damages resulting from such failure. Or the mortgagor may bring an action against the mortgagee to compel the discharge or release of the mortgage after the same has been satisfied; and the judgment of the court must be that the mortgagee discharge or release the mortgage and pay the mortgagor the costs of suit, and all damages resulting from such failure.

History: R. S. 1898 & C. L. 1907, § 2006; C. L. 1917, § 4907; R. S. 1933 & C. 1943, 78-3-8.

1. General construction.

This section does not mean to penalize one who honestly, though mistakenly, refuses to release or discharge a mortgage of record because he believes there has been no full satisfaction. Shibata v. Bear River State Bank, — U. —, 205 P. 2d 251.

This section is penal in nature and should be strictly construed. Shibata v. Bear River State Bank, — U. —, 205 P. 2d 251.

2. Scope and application of section.

The scope of this section is clearly limited to mortgagee-mortgagor relationship. Draper v. J. B. & R. E. Walker, Inc., — U. —, 204 P. 2d 826.

This section had no application to case where demand that release be executed was made by plaintiff, who was not a mortgagor, upon a mortgagee who had never occupied that position to plaintiff, or any one in privity with plaintiff. Draper v. J. B. & R. E. Walker, Inc., — U. —, 204 P. 2d 826.

3. Liability of mortgagee, breach of contract.

Where mortgagee agreed to advance money for construction of building as consideration for note and mortgage, but refused to furnish any money, offer to cancel mortgage upon condition of payment of certain expenses amounted to refusal

to cancel under this section, as the mortgagee's breach of contract relieved mortgagor of any further liability or duty. Swaner v. Union Mortgage Co., 99 U. 298, 105 P. 2d 342.

4. — defenses.

Mortgagee who refused to advance money for construction of house according to agreement, but who used position to coerce mortgagor in another transaction, could not claim that he was acting in good faith so as to escape liability under this section for failure to satisfy mortgage. Swaner v. Union Mortgage Co., 99 U. 298, 105 P. 2d 342.

Where mortgagee agreed to advance sums for construction of house, evidence supported finding that construction had been approved by federal housing administration, and consequently mortgagee's refusal to perform was unjustified. Swaner v. Union Mortgage Co., 99 U. 298, 105 P. 2d 342.

Where a bank, relying upon the advice of attorney and honestly thinking it had valid and subsisting mortgages against appellant which had not been satisfied, refused to release the mortgages, it was acting in good faith and was not liable for damages under this section. Shibata v. Bear River State Bank, — U. —, 205 P. 2d 251.

5. — evidence.

Evidence justified award of $25 for damages to partially constructed house resulting from failure of mortgagee to advance money according to agreement. Swaner v. Union Mortgage Co., 99 U. 298, 105 P. 2d 342.

6. What constitutes satisfaction of mortgage.

Refusal of mortgagee to advance money to mortgagor under terms of agreement terminated the mortgage and constituted satisfaction thereof. Swaner v. Union Mortgage Co., 99 U. 298, 105 P. 2d 342.

7. Attorney's fee.

Former statute, allowing attorney's fee to mortgagor in action to compel discharge or release by mortgagee of mortgage which has been fully satisfied, held invalid as special legislation. Openshaw v. Halfin, 24 U. 426, 68 P. 138, 91 Am. St. Rep. 796.

Attorney's fees incurred by mortgagor in bringing suit to cancel mortgage and note and to recover damages against mortgagee were proper item of damage to be assessed against mortgagee. Swaner v. Union Mortgage Co., 99 U. 298, 105 P. 2d 342.

Collateral References.

Mortgages⊂⇒311.
59 C.J.S. Mortgages § 473.

Validity and construction of statute allowing penalty and damages against mortgagee refusing to discharge mortgage on real property, 56 A. L. R. 335.

57-3-9. Conveyances prior to January 1, 1898—Recording—Effect.— All conveyances of real estate made before January 1, 1898 and acknowledged or proved according to the laws in force at the time of such making and acknowledgment or proof, have the same force as evidence, and may be recorded in the same manner and with the same effect, as conveyances executed and acknowledged in pursuance of this title.

History: R. S. 1898 & C. L. 1907, § 2003; C. L. 1917, § 4904; R. S. 1933 & C. 1943, 78-3-9.

Collateral References.

Acknowledgment⊂⇒47.
1 C.J.S. Acknowledgments § 120.

Retrospective applicability of recording laws relating to real property, 121 A. L. R. 909.

CHAPTER 4

VALIDATING CERTAIN CONVEYANCES

Section 57-4-1. Deeds of mayors and territorial probate judges under Townsite Act.
57-4-2. Mayor's deed prior to January 1, 1913.
57-4-3. Deeds of mayors, probate or district judges acknowledged before recorder or clerk.
57-4-4. All instruments recorded prior to January 1, 1943.

57-4-1. Deeds of mayors and territorial probate judges under Townsite Act.—All deeds made and executed prior to January 1, 1913, by the mayors of cities and probate judges of counties in the state or territory of Utah under the law relating to the "rules and regulations under the Townsite Act," that do not appear to have been signed or executed before any subscribing witness, or that are not subscribed by any witness, as required by any law of the state or territory of Utah existing at the time of making such deed or instrument, are hereby validated and confirmed, and shall have the same force and effect as if they had been originally signed and executed before subscribing witnesses thereto.

History: R. S. 1898 & C. L. 1907, § 2007; L. 1913, ch. 6, § 1; C. L. 1917, § 4908; R. S. 1933 & C. 1943, 78-4-1.

Collateral References.

Municipal Corporations⚖222.

63 C.J.S. Municipal Corporations § 950.

Constitutionality of retroactive statute curing defect in private instrument purporting to convey title or create interest in property or as to filing or recording thereof, 57 A. L. R. 1197.

57-4-2. Mayor's deed prior to January 1, 1913.—Deeds and conveyances executed prior to January 1, 1913, by any city in the state or territory of Utah, in its corporate name, of lands held in trust by the mayor, are hereby validated and confirmed, and shall have the same force and effect as if they had been duly executed by the mayor.

History: R. S. 1898 & C. L. 1907, § 2008; L. 1913, ch. 6, § 2; C. L. 1917, § 4909; R. S. 1933 & C. 1943, 78-4-2.

Collateral References.

Municipal Corporations⚖222.

63 C.J.S. Municipal Corporations § 950.

57-4-3. Deeds of mayors, probate or district judges acknowledged before recorder or clerk.—All deeds made and executed prior to January 1, 1913, by the probate judges of counties, district judges or mayors of cities, or by any city in its corporate name, in the state or territory of Utah, that have been acknowledged before and certified by city recorders or county clerks, shall have the same force and effect, and the record thereof shall impart notice to the same extent, as if the acknowledgment had been made, taken and certified as required by the law in force at the time of such execution and acknowledgment.

History: R. S. 1898 & C. L. 1907, § 2009; L. 1913, ch. 6, § 1; C. L. 1917, § 4910; R. S. 1933 & C. 1943, 78-4-3.

Collateral References.

Acknowledgment⚖47.

1 C.J.S. Acknowledgments § 120.

57-4-4. All instruments recorded prior to January 1, 1943.—All instruments of writing that were, previous to January 1, 1943, copied into the books of record in the offices of the county recorders of the several counties shall, after that date, impart to subsequent purchasers and encumbrancers, and to all other persons whomsoever, notice of the contents of all such instruments so far as the same may be found recorded, copied or noted in such books of record, notwithstanding any defect, omission or informality existing in their execution at the time of acknowledgment, or in the certificate of acknowledgment, the recording or certificate of recording of the same; and all such instruments, and the records or authenticated copies of the records thereof, shall be admissible in evidence,

notwithstanding such defects or omissions; but nothing herein shall be construed to affect any right or title acquired prior to that date.

History: L. 1901, ch. 104, § 1; 1907, ch. 90, § 1; C. L. 1907, § 2010; L. 1913, ch. 6, § 1; C. L. 1917, § 4911; L. 1921, ch. 111, § 1; R. S. 1933 & C. 1943, 78-4-4; L. 1943, ch. 84, § 1.

Compiler's Note.

The 1943 amendment changed the date from January 1, 1921, to January 1, 1943.

Cross-Reference.

Townsites generally, 57-7-1 et seq.

1. Operation and effect of section.

Acts of this character are purely remedial, and apply to pending actions, unless otherwise stated. Tate v. Rose, 35 U. 229, 99 P. 1003.

Collateral References.

Acknowledgment⇐47.
1 C.J.S. Acknowledgments § 120.

CHAPTER 5

PLATS AND SUBDIVISIONS

57-5-1. Laying out land into blocks, lots and streets—Lawful.—It shall be lawful for any owner of land to lay out and plat such land into blocks, lots, streets, alleys and public places.

History: R. S. 1898 & C. L. 1907, § 2011; C. L. 1917, § 5021; R. S. 1933 & C. 1943, 78-5-1.

1. Construction and application.

The court rejected as unsound the argument that streets could not be located on the plat of a township unless the street was already in use. Hall v. North Ogden City, 109 U. 304, 166 P. 2d 221, 224, judgment set aside on rehearing, 109 U. 325, 175 P. 2d 703.

Collateral References.

Dedication⇐19(1).
26 C.J.S. Dedication § 22.
Description of property, 16 Am. Jur. 584, Deeds § 260 et seq.

Constitutionality, construction, and application of statutes regulating the subdivision or development of land for sale or lease in lots or parcels, 122 A. L. R. 501.

57-5-2. Maps and plats of lands to be made.—Whenever any lands are hereafter so laid out and platted the owner of the same shall cause to be made an accurate map or plat thereof, particularly setting forth and describing:

(1) All the parcels of ground so laid out and platted, by their boundaries, course and extent, and whether they are intended for streets, alleys or other public uses, together with such as may be reserved for public purposes.

(2) All blocks and lots intended for sale, by numbers, and their precise length and width.

History: R. S. 1898 & C. L. 1907, § 2012; C. L. 1917, § 5022; R. S. 1933 & C. 1943, 78-5-2.

Comparable Provision.

Deering's Cal. Gen. Laws, Act 6500, Subdivision Map Act (section 4 thereof makes it unlawful for any person to offer to

sell, to contract to sell or to sell any subdivision or part thereof until a final map or record of survey map in compliance with this statute and local ordinances has been filed or recorded in office of recorder of county in which any portion of said subdivision is located).

1. Construction and application.

The court rejected as unsound the argument that streets could not be located on the plat of a township unless the street was already in use. Hall v. North Ogden City, 109 U. 304, 166 P. 2d 221, 224, judgment set aside on rehearing, 109 U. 325, 175 P. 2d 703.

Collateral References.

Dedication⊂⇒19(2).
26 C.J.S. Dedication § 22.

Validity and construction of regulations as to subdivision maps or plats, 11 A. L. R. 2d 524.

57-5-3. Maps and plats to be acknowledged, certified, approved and recorded.—Such map or plat shall be acknowledged by such owner before some officer authorized by law to take the acknowledgment of conveyances of real estate, and certified by the surveyor making such plat; if the land is situated in any city or incorporated town, such map or plat shall be approved by its governing body, or by some city or town officer for that purpose designated by resolution or ordinance of such governing body; and, if the land is situated outside of any city or incorporated town, shall be approved by the board of county commissioners of the county, or by some county officer for that purpose designated by resolution or ordinance of such board. When so acknowledged, certified and approved, it shall be filed and recorded in the office of the county recorder of the county in which the lands so platted and laid out are situated.

History: R. S. 1898 & C. L. 1907, § 2013; C. L. 1917, § 5023; R. S. 1933 & C. 1943, 78-5-3.

Collateral References.

Dedication⊂⇒19(4).
26 C.J.S. Dedication § 22.

Cross-Reference.

Approval necessary to recording, 17-21-8.

57-5-4. Recording of maps and plats to operate as dedication of streets.—Such maps and plats, when made, acknowledged, filed and recorded, shall operate as a dedication of all such streets, alleys and other public places, and shall vest the fee of such parcels of land as are therein expressed, named or intended for public uses in such county, city or town for the public for the uses therein named or intended.

History: R. S. 1898 & C. L. 1907, § 2014; C. L. 1917, § 5024; R. S. 1933 & C. 1943, 78-5-4.

1. Construction and application.

The court rejected as unsound the argument that streets could not be located on the plat of a township unless the street was already in use. Hall v. North Ogden City, 109 U. 304, 166 P. 2d 221, 224, judgment set aside on rehearing, 109 U. 325, 175 P. 2d 703.

Decisions from other Jurisdictions.

— Idaho.

An act passed by the legislature validating plats impressed upon all plats, theretofore filed, a dedication to the public of the streets and alleys, outlined in such plats, with the same force and effect as though a dedication had originally been placed upon such plats. Powell v. McKelvey, 56 Idaho 291, 53 P. 2d 626.

— Iowa.

A plat not dealing with an incorporated town may work a common-law dedication of streets therein provided for. Iowa Loan & Trust Co. v. Board of Suprs. Polk County, 187 Iowa 160, 174 N. W. 97, 5 A. L. R. 1532.

Where there is plat on which owner lays off lots, blocks, and streets, and adopts such plat by reference in selling, this amounts to irrevocable dedication of streets. Wolfe v. Kemler, 228 Iowa 733, 293 N. W. 322.

Collateral References.

Dedication⇐19(1).
26 C.J.S. Dedication § 22.

Attempted dedication as affecting right to assert after-acquired title, 62 A. L. R. 480.

Continued use of property for burial purposes as a condition subsequent of a conveyance or dedication of land for that purpose, 47 A. L. R. 1174.

Map or plat, conveyance of lot with reference to, as giving purchaser rights in indicated streets, alleys or areas not abutting his lot, 7 A. L. R. 2d 607.

Reservation of right-of-way for railroad or street railway in dedicating property for highway, 131 A. L. R. 1472.

Sufficiency as common-law dedication of incomplete statutory dedication, or ineffectual attempt to make statutory dedication, 63 A. L. R. 667.

Time for acceptance of dedication, 66 A. L. R. 321.

Validity and effect of restrictions or reservations in dedication of property in respect of right to operate public utilities, 58 A. L. R. 854.

57-5-5. Selling lots before recordation—Liability.—If any person shall sell any lot so platted according to such plat before it is made out, acknowledged, filed and recorded as aforesaid, such person shall forfeit to the county in which the land is located a sum not exceeding $300 for every lot which he shall sell. Such forfeiture shall be recovered in the name of such county in an action brought by the county attorney.

History: R. S. 1898 & C. L. 1907, § 2015; C. L. 1917, § 5025; R. S. 1933 & C. 1943, 78-5-5.

Collateral References.

Dedication⇐19(5).
26 C.J.S. Dedication § 23.

57-5-6. Vacating or changing plat.—Any owner of land that has been laid out and platted as hereinbefore provided may, upon application to the governing body of the city or town, or to the board of county commissioners of any county, wherein said land is situated, have such plat, or any portion thereof, or any street or alley therein contained, vacated, altered or changed as hereinafter provided.

History: R. S. 1898 & C. L. 1907, § 2016; C. L. 1917, § 5026; R. S. 1933 & C. 1943, 78-5-6.

1. In general.

The origin of this section in the Laws of 1894, and its present status, are given in Hall v. North Ogden City, 109 U. 304, 166 P. 2d 221, 225, judgment set aside on rehearing, 109 U. 325, 175 P. 2d 703.

Collateral References.

Dedication⇐29.
26 C.J.S. Dedication § 60.

57-5-7. Petition for vacation of plat.—If it is desired to vacate a portion only, or the entire plat, application in writing, signed by all the owners of the land contained in the entire plat and the owners of the land contiguous or adjacent to any street or alley therein to vacate or alter which application is made, shall be made to the governing body of the city or town wherein such land is situated, if the land is situated in an incorporated city or town; in all other cases the application shall be made to the board of commissioners of the county wherein it is situated.

History: R. S. 1898 & C. L. 1907, §§ 2017, 2019; C. L. 1917, §§ 5027, 5029; R. S. 1933 & C. 1943, 78-5-7.

1. In general.

The origin of this section in the Laws of 1894, p. 14, is given in Hall v. North Ogden City, 109 U. 304, 166 P. 2d 221, 225, judgment set aside on rehearing, 109 U. 325, 175 P. 2d 703.

Collateral References.

Dedication⇐29.
26 C.J.S. Dedication § 60.

57-5-8. Order of vacation of plat.—The city or town governing body or board of county commissioners shall at its next regular meeting after

the filing of such application consider the same, and, if satisfied that neither the public nor any person will be materially injured thereby, it shall order such portion or the entire plat to be vacated as prayed for in the petition, which order shall be recorded in the office of the recorder of the county wherein such land is situated.

History: R. S. 1898 & C. L. 1907, §§ 2018, 2020; C. L. 1917, §§ 5028, 5030; R. S. 1933 & C. 1943, 78-5-8.

1. In general.

Origin of this section is given in Hall v. North Ogden City, 109 U. 304, 166 P. 2d 221, 225, judgment set aside on rehearing, 109 U. 325, 175 P. 2d 703.

Collateral References.

Dedication⊂⇒29.
26 C.J.S. Dedication § 60.

CHAPTER 6

OCCUPYING CLAIMANTS

Section 57-6-1. Stay of execution of judgment of possession.
57-6-2. Claimant to commence action—Complaint—Trial of issues.
57-6-3. Rights of parties—Acquiring other's interest or hold as tenants in common.
57-6-4. Certain persons deemed to hold under color of title.
57-6-5. Settlers under state or federal law or contract deemed occupying claimant.
57-6-6. Set-off against claim for improvements.
57-6-7. When execution on judgment of possession may issue.
57-6-8. Improvements made by occupants of land granted to state.

57-6-1. Stay of execution of judgment of possession.—Where an occupant of real estate has color of title thereto, and in good faith has made valuable improvements thereon, and is afterwards in a proper action found not to be the owner, no execution shall issue to put the plaintiff in possession of the same after the filing of a complaint as hereinafter provided, until the provisions of this chapter have been complied with.

History: R. S. 1898 & C. L. 1907, § 2021; C. L. 1917, § 5031; R. S. 1933 & C. 1943, 78-6-1.

Cross-Reference.

Improvements allowed as counterclaim in suit to quiet title, 78-40-5.

1. In general.

In order to recover for improvements made as occupying claimant under this section, claimant (1) must have occupied under color of title, and (2) must have made improvements in good faith. Day v. Jones, 112 U. 286, 187 P. 2d 181.

2. Construction and application.

Purpose of above section is that one purchasing in good faith from county property acquired through operation of tax laws shall become vested with fixed property rights that will enable him to improve land without danger of losing value thereof if title is subsequently established in another. Peterson v. Weber County, 99 U. 281, 103 P. 2d 652.

3. Purchaser at tax sale.

"Tax sale" as used in occupying claimants' statute refers to transaction whereby purchaser becomes holder of a title, legal or equitable, the validity of which is dependent upon the regularity of the proceedings. Peterson v. Weber County, 99 U. 281, 103 P. 2d 652.

Oil company purchasing tax delinquent property from county under oral agreement, and paying part of purchase price, was a purchaser at a "tax sale" and had color of title sufficient to recover for improvements where property was redeemed upon avoiding sale. Peterson v. Weber County, 99 U. 281, 103 P. 2d 652.

Oil company purchasing property sold for delinquent taxes under oral agreement with county was entitled to value of improvements following redemption by transferee of owner after sale was declared void. Peterson v. Weber County, 99 U. 281, 103 P. 2d 652.

Improvements by purchaser at county tax sale fatally defective under Federal

the filing of such application consider the same, and, if satisfied that neither the public nor any person will be materially injured thereby, it shall order such portion or the entire plat to be vacated as prayed for in the petition, which order shall be recorded in the office of the recorder of the county wherein such land is situated.

History: R. S. 1898 & C. L. 1907, §§ 2018, 2020; C. L. 1917, §§ 5028, 5030; R. S. 1933 & C. 1943, 78-5-8.

1. In general.

Origin of this section is given in Hall v. North Ogden City, 109 U. 304, 166 P. 2d 221, 225, judgment set aside on rehearing, 109 U. 325, 175 P. 2d 703.

Collateral References.

Dedication⚖29.
26 C.J.S. Dedication § 60.

CHAPTER 6

OCCUPYING CLAIMANTS

57-6-1. Stay of execution of judgment of possession.—Where an occupant of real estate has color of title thereto, and in good faith has made valuable improvements thereon, and is afterwards in a proper action found not to be the owner, no execution shall issue to put the plaintiff in possession of the same after the filing of a complaint as hereinafter provided, until the provisions of this chapter have been complied with.

History: R. S. 1898 & C. L. 1907, § 2021; C. L. 1917, § 5031; R. S. 1933 & C. 1943, 78-6-1.

Cross-Reference.

Improvements allowed as counterclaim in suit to quiet title, 78-40-5.

1. In general.

In order to recover for improvements made as occupying claimant under this section, claimant (1) must have occupied under color of title, and (2) must have made improvements in good faith. Day v. Jones, 112 U. 286, 187 P. 2d 181.

2. Construction and application.

Purpose of above section is that one purchasing in good faith from county property acquired through operation of tax laws shall become vested with fixed property rights that will enable him to improve land without danger of losing value thereof if title is subsequently established in another. Peterson v. Weber County, 99 U. 281, 103 P. 2d 652.

3. Purchaser at tax sale.

"Tax sale" as used in occupying claimants' statute refers to transaction whereby purchaser becomes holder of a title, legal or equitable, the validity of which is dependent upon the regularity of the proceedings. Peterson v. Weber County, 99 U. 281, 103 P. 2d 652.

Oil company purchasing tax delinquent property from county under oral agreement, and paying part of purchase price, was a purchaser at a "tax sale" and had color of title sufficient to recover for improvements where property was redeemed upon avoiding sale. Peterson v. Weber County, 99 U. 281, 103 P. 2d 652.

Oil company purchasing property sold for delinquent taxes under oral agreement with county was entitled to value of improvements following redemption by transferee of owner after sale was declared void. Peterson v. Weber County, 99 U. 281, 103 P. 2d 652.

Improvements by purchaser at county tax sale fatally defective under Federal

Soldiers' and Sailors' Civil Relief Act, made after receipt by purchaser of letters from record owner advising former that latter was still owner under operation of that act, were not made in good faith as required by this section, so that purchaser was not entitled to reimbursement therefor. Day v. Jones, 112 U. 286, 187 P. 2d 181.

4. Ejectment, issues.

If the making of improvements and their value are properly put in issue in action to recover possession of the premises, those issues will not be again tried and determined in a separate proceeding instituted by defendant in main action. Boland v. Nihlros, 79 U. 331, 10 P. 2d 930.

5. — counterclaim.

In action in ejectment to recover possession of land, wherein it appeared that defendant occupied land belonging to state, held, defendant was not entitled to counterclaim for alleged improvements on land, in absence of showing that his possession was under color of title and in good faith. Van Wagoner v. Whitmore, 58 U. 418, 199 P. 670.

6. Quieting title.

In suit to quiet title to land, evidence that improvements were made on land by plaintiff's grantor in good faith, standing alone, would not be sufficient to meet the requirements of statutes on adverse possession (former sections 104-2-5 to 104-2-12), although there might be grounds for relief under the statutes on "occupying claimants." Home Owners' Loan Corp. v. Dudley, 105 U. 208, 227, 141 P. 2d 160, 169.

7. Petition of occupying claimant.

Under this section an occupying claimant, finally adjudged not to be the owner, may, after disposition of his appeal adverse to him, file his petition in trial court to ascertain value of improvements made by him. Fares v. Urban, 46 U. 609, 151 P. 57, approved in Home Owners Loan Corp. v. Dudley, 105 U. 208, 141 P. 2d 160.

A claim of right under our occupying claimant's statute can only be made after the title is adjudicated to be in a person other than the claimant of the improvements. Utah Copper Co. v. Eckman, 47 U. 165, 152 P. 178, following Fares v. Urban, 46 U. 609, 151 P. 57.

Before claimant can file petition, title must first be adjudicated to be in another. Sorenson v. Korsgaard, 83 U. 177, 27 P. 2d 439.

Decisions from other Jurisdictions— Iowa.

In determining the value of the improvements, the occupying claimant should have, not what the improvements cost, but the value thereby imparted to the land. Welles v. Newsom, 76 Iowa 81, 40 N. W. 105.

The proceeding, under the occupying claimants' statute, does not contemplate recovery of a personal judgment against the landowner, but is in the nature of the assertion of a lien on the property by the party in possession, accompanied by the right to retain such possession until the lien is satisfied. Lindt v. Uihlein, 116 Iowa 48, 89 N. W. 214.

Satisfaction of a claim established under the occupying claimants' statute may be effected either by the adverse party paying the value of the improvements and taking the property, by the claimant taking his interest in the property upon the refusal of the adverse party to pay the value of the improvements, or by the parties becoming tenants in common of the real estate including the improvements. McCormick & McCormick v. Dumbarton Realty Co., 156 Iowa 692, 137 N. W. 943.

One claiming title under the occupying claimants' statute must bring himself within that statute and pursue the course indicated therein. Bryan v. Christianson, 188 Iowa 669, 176 N. W. 702.

Collateral References.

Improvements⇨4(6).
42 C.J.S. Improvements § 14.

Allowance for improvements in reliance upon title or interest defeated by failure to record conveyance, 40 A. L. R. 282.

Betterment or occupying claimants' acts as available to plaintiff seeking affirmative relief, 137 A. L. R. 1078.

Holder of invalid tax title as within Occupying Claimants' Act, 44 A. L. R. 479.

57-6-2. Claimant to commence action—Complaint—Trial of issues.— Such complaint must set forth the grounds on which the defendant seeks relief, stating as accurately as practicable the value of the real estate, exclusive of the improvements thereon made by the claimant or his grantors, and the value of such improvements. The issues joined thereon must be tried as in law actions, and the value of the real estate and of such improvements must be separately ascertained on the trial.

History: R. S. 1898 & C. L. 1907, § 2022; C. L. 1917, § 5032; R. S. 1933 & C. 1943, 78-6-2.

1. Equitable basis of section.

This section ameliorates strict common-law rule that record owner is entitled to improvements placed by another upon his property, and is based upon equitable doctrine of unjust enrichment, which entitles bona fide claimant, who acted while in possession under color of title, to recover value of his improvements to extent that they unjustly enrich record owner by enhancing value of his land. Reimann v. Baum, — U. —, 203 P. 2d 387.

This section recognizes the equitable rule that "the reasonable cost of the improvements, alone, is not sufficient evidence of value, but such cost may be considered together with all other evidence of value in determining the increase in value of the land on account of the improvements." Reimann v. Baum, — U. —, 203 P. 2d 387.

2. Conditions precedent to recovery.

Under our statute an occupying claimant is required to establish two elements before he can recover for improvements placed on real property by him: (1) That he has color of title to the premises in question; and (2) that he placed the improvements thereon in good faith. If he fails to establish either one, he cannot recover. Doyle v. West Temple Terrace Co., 47 U. 238, 152 P. 1180.

3. Effect of section.

This section contemplates a separate action. American Mut. Bldg. & Loan Co. v. Jones, 102 U. 318, 117 P. 2d 293, rehearing denied 102 U. 328, 133 P. 2d 332, Mr. Chief Justice Wolfe dissenting.

4. Good faith of claimant.

Such claimant must show that he had color of title and made the improvements in good faith; where not made in good faith, real owner, upon recovery of the land, will not be compelled to pay for the improvements, and occupying claimant, holding under tax deed that is void and decree that has been set aside, cannot recover for improvements made on realty in bad faith. Doyle v. West Temple Terrace Co., 47 U. 238, 152 P. 1180.

5. Evidence.

Evidence sustained finding that defendants were not occupying claimants but were in possession as result of a trust. Sorenson v. Korsgaard, 83 U. 177, 27 P. 2d 439.

In suit to quiet title to land, evidence that improvements were made on land by plaintiff's grantor in good faith, standing alone, would not be sufficient to meet the requirements of statutes on adverse possession (former sections 104-2-5 to 104-2-12), although there might be grounds for relief under the statutes on "occupying claimants." Home Owners' Loan Corp. v. Dudley, 105 U. 208, 227, 141 P. 2d 160, 169.

In action to quiet title to three parcels of realty and to recover damages, evidence was insufficient to support finding that occupying claimants had constructed permanent improvements on the land. Reimann v. Baum, — U. —, 203 P. 2d 387.

6. Effect of appeal.

Under this section, if a party elects to appeal from adverse determination of issue of ownership, his duty to file a petition is suspended until the appeal is finally determined and the remittitur has gone down. Fares v. Urban, 46 U. 609, 151 P. 57.

Decisions from other Jurisdictions—Iowa.

Recovery for improvements on land by occupying claimants, by independent action, was not permitted at common law and exists now only through enabling statute, and an essential prerequisite for such relief is compliance with all conditions precedent, and applicant for such redress through statute must bring himself within terms and provisions thereof. Bigelow v. Indemnity Ins. Co. of North America, 206 Iowa 884, 221 N. W. 661.

Collateral References.

Improvements⊂⇒4(6).
42 C.J.S. Improvements § 14.

Measure of recovery for improvements made by purchaser of invalid tax title, 129 A. L. R. 1354.

57-6-3. Rights of parties—Acquiring other's interest or hold as tenants in common.—The plaintiff in the main action may thereupon pay the appraised value of the improvements and take the property, but should he fail to do so after a reasonable time, to be fixed by the court, the defendant may take the property upon paying its value, exclusive of the improvements. If this is not done within a reasonable time, to be fixed by the court, the parties will be held to be tenants in common of all the

real estate, including the improvements, each holding an interest proportionate to the values ascertained on the trial.

History: R. S. 1898 & C. L. 1907, § 2023; C. L. 1917, § 5033; R. S. 1933 & C. 1943, 78-6-3.

1. Equitable basis of section.

This section ameliorates strict common-law rule that record owner is entitled to improvements placed by another upon his property, and is based upon equitable doctrine of unjust enrichment, which entitles bona fide claimant, who acted while in possession under color of title, to recover value of his improvements to extent that they unjustly enrich record owner by enhancing value of his land. Reimann v. Baum, — U. —, 203 P. 2d 387.

This section recognizes the equitable rule that "the reasonable cost of the improvements, alone, is not sufficient evidence of value, but such cost may be considered together with all other evidence of value in determining the increase in value of the land on account of the improvements." Reimann v. Baum, — U. —, 203 P. 2d 387.

2. Right to sale or partition of property.

The occupying claimants' statute contains no provision for sale of the property or for application of the proceeds to satisfying the interests of the parties. The statute merely calls for a relationship of tenants in common in the premises. A partition or other separation of interests is the subject-matter of a different action. American Mut. Bldg. & Loan Co. v. Jones, 102 U. 318, 117 P. 2d 293, rehearing denied 102 U. 328, 133 P. 2d 332, Mr. Chief Justice Wolfe dissenting.

3. Evidence.

In suit to quiet title to land, evidence that improvements were made on land by plaintiff's grantor in good faith, standing alone, would not be sufficient to meet the requirements of statutes on adverse possession (former sections 104-2-5 to 104-2-12), although there might be grounds for relief under the statutes on "occupying claimants." Home Owners' Loan Corp. v. Dudley, 105 U. 208, 227, 141 P. 2d 160, 169.

In action to quiet title to three parcels of realty and to recover damages, evidence was insufficient to support finding that occupying claimants had constructed permanent improvements on the land. Reimann v. Baum, — U. —, 203 P. 2d 387.

57-6-4. Certain persons deemed to hold under color of title.—A purchaser in good faith at any judicial or tax sale made by the proper person or officer has color of title within the meaning of this chapter, whether such person or officer has sufficient authority to sell or not, unless such want of authority was known to such purchaser at the time of the sale; and any person has color of title who has occupied a tract of real estate by himself, or by those under whom he claims, for the term of five years, or who has thus occupied it for less time, if he, or those under whom he claims, have at any time during such occupancy with the knowledge or consent, express or implied, of the real owner made any valuable improvements thereon, or if he or those under whom he claims have at any time during such occupancy paid the ordinary county taxes thereon for any one year, and two years have elapsed without a repayment of the same by the owner thereof, and such occupancy is continued up to the time at which the action is brought by which the recovery of the real estate is obtained; and his rights shall pass to his assignees or representatives; but nothing in this chapter shall be construed to give tenants color of title against their landlords.

History: R. S. 1898 & C. L. 1907, § 2024; C. L. 1917, § 5034; R. S. 1933 & C. 1943, 78-6-4.

1. Purpose of section.

Purpose of above section is that one purchasing in good faith from county property acquired through operation of tax laws shall become vested with fixed property rights that will enable him to improve land without danger of losing value thereof if title is subsequently established in another. Peterson v. Weber County, 99 U. 281, 103 P. 2d 652.

2. Who is occupying claimant.

One who has paid the taxes upon his improvements, and has made said improve-

ments in good faith, is an occupying claimant. Utah Copper Co. v. Eckman, 47 U. 165, 152 P. 178, applying Comp. Laws 1907, § 2024.

3. Purchaser at tax sale.

"Tax sale" as used in occupying claimants' statute refers to transaction whereby purchaser becomes holder of a title, legal or equitable, the validity of which is dependent upon the regularity of the proceedings. Peterson v. Weber County, 99 U. 281, 103 P. 2d 652.

Oil company purchasing property sold for delinquent taxes under oral agreement with county was entitled to value of improvements following redemption by transferee of owner after sale was declared void. Peterson v. Weber County, 99 U. 281, 103 P. 2d 652.

Oil company purchasing tax delinquent property from county under oral agreement, and paying part of purchase price, was a purchaser at a "tax sale," and had color of title sufficient to recover for improvements where property was redeemed upon avoiding sale. Peterson v. Weber County, 99 U. 281, 103 P. 2d 652.

4. Evidence.

In suit to quiet title to land, evidence that improvements were made on land by plaintiff's grantor in good faith, standing alone, would not be sufficient to meet the requirements of statutes on adverse possession former sections 104-2-5 to 104-2-12), although there might be grounds for relief under the statutes on "occupying claimants." Home Owners' Loan Corp. v. Dudley, 105 U. 208, 227, 141 P. 2d 160, 169.

5. Instructions.

Where occupying claimant suing for value of improvements bases his right exclusively upon a tax deed, and upon a decree quieting title which was subsequently vacated, court may restrict its charge thereto, and is not bound to enlarge on defendant's claims as alleged. Doyle v. West Temple Terrace Co., 47 U. 238, 152 P. 1180.

Decisions from other Jurisdictions.

— Federal.

A claimant having color of title by five years' occupancy at the time judgment is recovered against him may recover for his improvements, although they were made before the expiration of the period of possession necessary to constitute such color of title. Litchfield v. Johnson, 4 Dill. (U. S.) 551.

— Iowa.

The claim for improvements is assignable and the occupant may recover for improvements made by those under whom he claims. Craton v. Wright, 16 Iowa 133; Parsons v. Moses, 16 Iowa 440.

The making of improvements upon land by one in possession under contract of purchase gives him an equitable interest which will pass by a conveyance. White v. Butt, 32 Iowa 335.

Grantees who reconveyed to the grantor in consideration of satisfaction of the purchase money mortgage, return of the mortgage notes, and another note for a loan by the grantor, held not entitled to recoup for improvements made on the land reconveyed, the right of an occupying claimant as defined by statute being inapplicable, and there being no competent evidence of any right of recoupment. Felton v. Thompson, 209 Iowa 29, 227 N. W. 529.

Collateral References.

Improvements⊂⇒4(2).
42 C.J.S. Improvements § 7.

57-6-5. Settlers under state or federal law or contract deemed occupying claimants.—When any person has settled upon any real estate and occupied the same for three years under or by virtue of any law or contract with the proper officers of the state for the purchase thereof, or under any law of, or by virtue of any purchase from, the United States, and shall have made valuable improvements thereon, and shall be found not to be the owner thereof, or not to have acquired a right to purchase the same from the state or the United States, such person shall be an occupying claimant within the meaning of this chapter.

History: R. S. 1898 & C. L. 1907, § 2025; C. L. 1917, § 5035; R. S. 1933 & C. 1943, 78-6-5.

Collateral References.

Improvements⊂⇒4(2).
42 C.J.S. Improvements § 7.

Public lands, rights under occupying claimants' act, as between adverse claimants, to compensation for improvements placed on, 6 A. L. R. 100.

57-6-6. Set-off against claim for improvements.—In the cases above provided for, if the occupying claimant has committed any injury to the real estate by cutting timber, or otherwise, the plaintiff may set the same off against any claim for improvements made by the claimant.

History: R. S. 1898 & C. L. 1907, § 2026; C. L. 1917, § 5036; R. S. 1933 & C. 1943, 78-6-6.

Collateral References.

Improvements⇐4(6).
42 C.J.S. Improvements § 14.

57-6-7. When execution on judgment of possession may issue.—The plaintiff in the main action is entitled to an execution to put him in possession of his property in accordance with the provisions of this chapter, but not otherwise.

History: R. S. 1898 & C. L. 1907, § 2027; C. L. 1917, § 5037; R. S. 1933 & C. 1943, 78-6-7.

1. Right to possession.

If in an action to quiet title to property sold for taxes, plaintiff pays amount of improvements and taxes, he may be let into immediate possession, and there is "no reason for including in the decree thirty days over and above the sixty days before plaintiff may obtain a writ of assistance." American Mut. Bldg. & Loan Co. v. Jones, 102 U. 318, 117 P. 2d 293.

Collateral References.

Improvements⇐4(6).
42 C.J.S. Improvements § 14.

57-6-8. Improvements made by occupants of land granted to state.—Any person having improvements on any real estate granted to the state in aid of any work of internal improvement, whose title thereto is questioned by another, may remove such improvements without injury otherwise to such real estate, at any time before he is evicted therefrom, or he may claim and have the benefit of this chapter by proceeding as herein directed.

History: R. S. 1898 & C. L. 1907, § 2028; C. L. 1917, § 5038; R. S. 1933 & C. 1943, 78-6-8.

Cross-Reference.

Right of owner of improvements on lands purchased from state, 65-1-40.

Collateral References.

Improvements⇐4(6).
42 C.J.S. Improvements § 14.

CHAPTER 7

TOWNSITES

Section 57-7-1. Disposition of lots to persons entitled after entry.
57-7-2. Notice of entry.
57-7-3. Claims to lots to be filed—Time and place.
57-7-4. Adverse claims—Determination.
57-7-5. Proof of claims when no adverse claim advanced.
57-7-6. Conveyance and deed to proper claimant.
57-7-7. When judge is claimant of lands.
57-7-8. When city or town officer if claimant of lands.
57-7-9. Change of venue.
57-7-10. Statement of expenses.
57-7-11. Payment to be made before conveyance.
57-7-12. Full payment to be made within six months—Lien for nonpayment—Sale to satisfy.
57-7-13. Errors in measurement not to invalidate proceedings.
57-7-14. Death of officer—Authority to complete trust vests in successor.
57-7-15. Disposition of unclaimed lands.

57-7-1. Disposition of lots to persons entitled after entry.—When the corporate authorities of any city or town, or the district judge of any county in which any city or town may be situated, shall have entered at the proper land office the land or any part of the land settled and occupied as the site of such city or town pursuant to and by virtue of the provisions of the Act of Congress entitled "An act for the relief of the inhabitants of cities and towns upon the public lands," approved March 2, 1867, and acts amendatory thereof and supplementary thereto, it shall be the duty of such corporate authorities or judge, as the case may be, to dispose of and convey the title to such land, or to the several blocks, lots, parcels or shares thereof, to the persons entitled thereto, who shall be ascertained as hereinafter prescribed.

History: R. S. 1898 & C. L. 1907, § 2701; C. L. 1917, § 6121; R. S. 1933 & C. 1943, 94-0-1.

Comparable Provisions.

Deering's Cal. Gen. Laws, Act 5946a, § 1 (in case of town lands mentioned in Act of Congress entitled "An act for the relief of the inhabitants of cities and towns upon the public lands," approved March 2, 1867, grants or deeds are hereby confirmed, as though certain acts regarding "city of Placerville" had never been enacted); § 4 (all cities, towns, and their corporate authorities to be bound by provisions of Act of Congress approved March 24, 1868.

Montana Rev. Codes 1947, § 11-2901 (duty of city or town council to enter at proper land office of United States such quantity of land as inhabitants may be entitled to claim); § 11-3001 (similar duty entailed upon judge of district court of county, on behalf of inhabitants of unincorporated town).

Cross-Reference.

Validating acts generally, 57-4-1 et seq.

1. In general.

The duty of the corporate authorities or judge, as prescribed by this section, does not differ in any very material respect from act of territorial legislature, approved Feb. 17, 1869, known as Territorial Townsite Act, and carried as § 1166, C. L. 1876. Hall v. North Ogden City, 109 U. 304, 166 P. 2d 221, judgment set aside on rehearing 109 U. 325, 175 P. 2d 703.

The history of the Utah Territorial Act, approved Feb. 17, 1869 (C. L. 1876), and the Federal Townsite Act (14 Stat. 541) was reviewed at length in Hall v. North Ogden City, 109 U. 304, 166 P. 2d 221, 222, judgment set aside on rehearing 109 U. 325, 175 P. 2d 703.

2. Constitutionality.

Our act has been construed as not being in conflict with the Townsite Act. Hall v. North Ogden City, 109 U. 325, 175 P. 2d 703, 708, setting aside on rehearing judgment in 109 U. 304, 166 P. 2d 221.

3. Nature of title of trustee.

The corporate authorities or judge who enter the lands as provided by this section hold the legal title to the lands for the use and benefit of the occupants according to their respective interests. Congress expressly provided that the occupants were the beneficiaries of the trust, and as soon as the entry was made under the Townsite Act, the occupants became the equitable owners of the lands which they then were occupying and using, and the local legislature was not authorized to change the beneficiaries or otherwise dispose of the property. The local legislature was only authorized to make rules and regulations for the execution of the trust as created by the Act of Congress; it was not authorized to create a new trust or dispose of the lands contrary to the interests of the occupants. Hall v. North Ogden City, 109 U. 325, 175 P. 2d 703, setting aside on rehearing judgment in 109 U. 304, 166 P. 2d 221.

4. Decisions under former law.

Under this "Townsite Law" as it was when first enacted, the proceedings were before the probate judge and not the district court. In many respects, however, the former law is identical with the present section. Rogers v. Thompson, 9 U. 46, 33 P. 234.

5. Entry by mayor.

If the mayor of a city makes the entry, he is a trustee. Pratt v. Young, 1 U. 347, aff'd 99 U. S. 619, 25 L. Ed. 446.

Decisions from other Jurisdictions.

— California.

Town board of trustees was a mere trustee for the occupants, and by terms of Act of Congress, entitled "An act for the relief of the inhabitants of cities and towns" passed March 2, 1867, were to execute their trust under such regulations as might be prescribed by the legislature, the Act of Congress providing that corporate authorities might enter the lands "in trust for the several use and benefit of the occupants thereof, according to their respective interests." Cerf v. Pfleging, 94 Cal. 131, 29 P. 417.

Rights of bona fide occupants could not be affected by terms of statutes having reference to making of survey or map of town; and, as stated in earlier case of Alemany v. City of Petaluma, 38 Cal. 553, "The map which they were authorized to make was a map representing the existing streets, alleys, and squares, and such others as the occupants of the property might consent to. But it was not within the contemplation of the act that the persons getting up a map of an existing town might wholly disregard the former plan, lay out new streets, alleys, and squares, upon property before then devoted to private use, without the consent of the occupants. Such a power, in the hands of a few persons proceeding to secure the benefits of the act of July 1, 1864, to an already existing town, would have been liable to the grossest abuses, and destructive of the private rights which the act was mainly designed to foster." Gervasoni v. City of Petaluma, 189 Cal. 306, 208 P. 120.

Although filing of declaratory statement is not necessary to location of townsite, it is proper, under Act of Congress of 1867, to take that course as the initial step for making a townsite entry in preference over the making of a cash entry as the first step looking to the pre-emption of lands for such a purpose; and, although the declaratory statement may not be an actual entry in the same sense that a cash entry is, and, although to effectually serve purpose for which it is intended, it must be kept alive by following it up within proper time, after it has been filed, by other steps essential under the law to the establishment of a townsite, yet the effect of such filing is, even if not as against the government, certainly as against the claims of others, to vest in those who are actual or bona fide settlers upon and occupants of portions of such lands at time of filing of such statement an inceptive right to the portions so settled upon and occupied. Placer County v. Lake Tahoe Railway & Transportation Co., 58 Cal. App. 764, 209 P. 900.

— Idaho.

Occupants possessed certain rights in and to the lots occupied by them before the entry, and the only authority the surveyor had was to plat the town in conformity to the use and occupancy of the lots and blocks; the plat must be made for the benefit and use of the occupants; the surveyor's power was limited; he had no authority to establish streets through and over buildings, nor to cut off any portions or parts of buildings for that purpose. Scully v. Squier, 13 Idaho 417, 90 P. 573, 30 L. R. A. (N. S.) 183.

— Montana.

Regulations of local legislature as to disposition of lots could not enlarge or diminish the rights or interests of occupants of the lots. Parcher v. Ashby, 5 Mont. 68, 1 P. 204, aff'd 119 U. S. 526, 30 L. Ed. 469, 7 S. Ct. 308.

Probate judge became trustee of occupants for all their interest or right in or pertaining to the lots; Act of Congress, authorizing conveyance to probate judge in trust for use and benefit of occupants of the lots according to their respective rights and interests, was a grant, and carried with it everything necessary and requisite to make it operative; all powers of probate judge, as trustee, are exhausted when he has conveyed to occupants their lots according to their several rights and interests. Parcher v. Ashby, 5 Mont. 68, 1 P. 204, aff'd 119 U. S. 526, 30 L. Ed. 469, 7 S. Ct. 308.

Collateral References.

Public Lands⇐39(1).
73 C.J.S. Public Lands § 57.

57-7-2. Notice of entry.—Within thirty days after the entry of any such lands the corporate authorities or judge entering the same shall give public notice of the entry in at least five public places within such city or town, and shall publish the notice in some newspaper printed and published in this state and having a general circulation in such city or

town. The notice shall be published once a week for at least three successive months, and shall contain an accurate description of the lands so entered as stated in the certificate of entry or the duplicate receipt received from the officer of the land office.

History: R. S. 1898 & C. L. 1907, § 2702; C. L. 1917, § 6122; R. S. 1933 & C. 1943, 94-0-2.

1. In general.

The early history of this section is referred to at some length in Hall v. North Ogden City, 109 U. 304, 166 P. 2d 221, 223, judgment set aside on rehearing 109 U. 325, 175 P. 2d 703.

2. Notice.

Section contemplates giving of notice, not within 30 days after application for entry is made, but only within 30 days after final certificate of entry is issued. Holland v. Buchanan, 19 U. 11, 56 P. 561.

Collateral References.

Public Lands⊂⇒39(3).
73 C.J.S. Public Lands § 59.

57-7-3. Claims to lots to be filed—Time and place.—Every person claiming any lot or parcel of such land shall, within six months after the first publication of the notice, in person or by his agent or attorney, sign a statement in writing containing an accurate description of the particular lot or parcel of land in which he claims to have an interest and the specific right, interest or estate therein which he claims to be entitled to receive, and he shall deliver the same to the clerk of the district court of the county in which such city or town is situated. Such clerk shall enter the statements in a book to be kept for that purpose, and shall file and preserve them in his office, noting the day of filing. The filing of each statement shall be considered notice to all persons claiming any interest in the lands described therein of the claim of the party filing the same, and any person failing to make and deliver a statement within the time limited in this section shall be forever barred of the right of claiming or recovering such land, or any interest or estate therein or in any part thereof, in any court; provided, that when good cause is shown why such statement could not be filed within the time herein specified the judge may extend the time, not exceeding one year from the first publication of such notice.

History: R. S. 1898 & C. L. 1907, § 2703; C. L. 1917, § 6123; R. S. 1933 & C. 1943, 94-0-3.

Comparable Provision.

Montana Rev. Codes 1947, § 11-2909 (verified affidavit of claim must be presented to council within six months after plat has been filed in office of county clerk).

1. In general.

The early history of this section is referred to at some length in Hall v. North Ogden City, 109 U. 304, 166 P. 2d 221, 223, judgment set aside on rehearing 109 U. 325, 175 P. 2d 703.

The time for the presentation of claims was extended by act approved Feb. 18, 1876, to relieve from default those who had not made timely application for the lands occupied by them. Upon expiration of time for filing claims to lands within the area of the streets shown on the plat, successors in interest of those who received their deeds from the probate judge could not re-adjudicate the claims of the original claimants after expiration of 70 years. Hall v. North Ogden City, 109 U. 304, 166 P. 2d 221, applying C. L. 1876, p. 385, § 1178, judgment set aside on rehearing 109 U. 325, 175 P. 2d 703.

The last sentence and the proviso of this section are in many respects identical with § 1168, Comp. Laws 1876, setting out the rules and regulations under the Townsite Act, adopted in pursuance of the Federal Townsite Act of 1867 (43 USCA 718) providing for the execution of the trust arising from the entry of the land in question. Accordingly, although defendant "had failed to present a statement in writing of his claim to the lands in question, still he was not barred from proving that he was the occupant of the land at the time the entry was made by

the county judge, and that such proof would defeat the claim of one who had received a deed from the county judge as trustee who was not then in possession of such lands since such deed was void." Hall v. North Ogden City, 109 U. 325, 175 P. 2d 703, setting aside on rehearing judgment in 109 U. 304, 166 P. 2d 221, and following Treadway v. Wilder, 8 Nev. 91, and City of Pueblo v. Budd, 19 Colo. 579, 36 P. 599.

2. Statement in writing.

Under this section it will be presumed that court properly allowed the filing, and that sufficient cause was shown, where application was indorsed: "By permission cause considered sufficient." Kinney v. Lewis, 2 U. 512, applying Comp. Laws 1876, § 1168, whose proviso is identical with that of this section.

Failure to deliver the statement within the time specified in this section is an absolute bar to recovery of the same. Heirs and remaindermen have no superior rights to others, and must suffer for negligence of life tenant. Drake v. Reggel, 10 U. 376, 37 P. 583.

Unless statement is filed as required by this section, claimants would be precluded from claiming or recovering the land in question under any right or title existing at time when such statements should have been filed, and statute contains no express exception as to persons under disabilities, and, of course, no such exception can be ingrafted on it by construction. Furthermore, where a right vests in a class as such, the action or laches of the members of the class in being binds those yet unborn. Drake v. Reggel, 10 U. 376, 383, 37 P. 583.

When statement is signed by attorney in fact in his own name without disclosing his principal, it is proper to allow statement to be amended to accord with fact, provided adverse claimants are not in any manner prejudiced by amendment. Clark v. Kirby, 18 U. 258, 55 P. 372.

Statement must be treated by court as complaint, and material facts may be denied and issues tried. Clark v. Kirby, 18 U. 258, 55 P. 372.

3. Adverse claim.

Claim to incorporeal right, such as easement, held not adverse claim within meaning of former statute and not required to be set up for adjudication by probate court. Clawson v. Wallace, 16 U. 300, 52 P. 9.

4. Effect of failure to file claims.

The Supreme Court of Colorado has held "squarely that the occupant had an equitable ownership in the property which he was occupying at the time of the entry; that such ownership became a vested right when the lands were entered in the land office, which was granted him by the act of congress, and that thereafter the county judge under that act held the legal title to the property as trustee for the use and benefit of the occupant who was beneficiary of the trust; that such vested right was not divested under the rules and regulations of the local legislative authority, for failure to file his claim thereto as long as the occupant remained in possession of the property." Hall v. North Ogden City, 109 U. 325, 175 P. 2d 703, 707, setting aside on rehearing judgment in 109 U. 304, 166 P. 2d 221, and following City of Pueblo v. Budd, 19 Colo. 579, 36 P. 599, as being "a case very similar in facts to our case," and adding that "the reasoning in that case seems to be unanswerable and is controlling in the present case."

5. Equitable right.

Occupant in possession may sell and transfer his equitable right to lot under townsite entry before patent. Clawson v. Wallace, 16 U. 300, 52 P. 9. However, the word "occupant" no longer appears in this section. Hussey v. Smith, 1 U. 129, rev'd 99 U. S. 20, 25 L. Ed. 314; Cooke v. Young, 2 U. 254.

Collateral References.

Public Lands⇐39(6).
73 C.J.S. Public Lands § 66.

57-7-4. Adverse claims—Determination.—If at the expiration of six months after the first publication of such notice it shall be found by the statements filed that there are adverse claimants to any lot or parcel of land, it shall be the duty of the district judge, taking up each case in the order of filing, to cause notice to be served upon the claimants thereto, or their agents or attorneys, to appear before the district court and prosecute their claims upon a day to be appointed by the court, not less than five nor more than thirty days from the service of such notice. The statements filed as aforesaid shall stand in the place of pleadings, and an issue may be made thereon. On the day set for the hearing the

court shall proceed to hear the evidence adduced in support of the allegations of the parties and shall decide according to the justice of the case.

History: R. S. 1898 & C. L. 1907, § 2704; C. L. 1917, § 6125; R. S. 1933 & C. 1943, 94-0-4.

1. In general.

The early history of this section is referred to at some length in Hall v. North Ogden City, 109 U. 304, 166 P. 2d 221, 223. Judgment set aside on rehearing 109 U. 325, 175 P. 2d 703.

2. Operation and effect of section.

This proceeding before the district court and his decision must be regarded as having the effect of a judgment. Rogers v. Thompson, 9 U. 46, 33 P. 234.

Under this section the court's adjudication has the force and effect of a judgment, which cannot be collaterally attacked on the ground that the person not presenting his claim was ignorant of his rights. Rogers v. Thompson, 9 U. 46, 33 P. 234.

3. Pleadings.

Complaint in action by child of original occupant of part of townsite, after death of original occupant, for relief, must allege that widow and children of deceased occupant had continued their occupancy up to time of entry of lands in townsite by municipal authorities. West v. Child, 8 U. 223, 30 P. 755. And see West v. Utah Nat. Bank, 8 U. 374, 31 P. 987.

Collateral References.

Public Lands⇐39(8).
73 C.J.S. Public Lands § 67.

57-7-5. Proof of claims when no adverse claim advanced.—After the expiration of the six months for filing statements, if there are no adverse claimants, the court, taking up the cases in the order of filing, shall cause a summons to be issued and served upon each party filing a statement, or his agent, requiring him to appear before the court upon a day designated, not less than three nor more than ten days from the service of such summons and make proof of his statement.

History: R. S. 1898 & C. L. 1907, § 2705; C. L. 1917, § 6126; R. S. 1933 & C. 1943, 94-0-5.

1. Operation and effect of section.

This proceeding before the district judge and his decision must be regarded as having the effect of a judgment. Rogers v. Thompson, 9 U. 46, 33 P. 234.

Collateral References.

Public Lands⇐39(6).
73 C.J.S. Public Lands § 66.

57-7-6. Conveyance and deed to proper claimant.—Where the entry of the townsite shall have been made by the district judge the conveyance shall be made by him in accordance with the judgment entered. Where the corporate authorities shall have made the entry the court shall certify its judgment to the city commissioners or mayor of the city, or to the president of the board of trustees of the town, who shall accordingly make to the party claimant the proper deed.

History: R. S. 1898 & C. L. 1907, § 2706; C. L. 1917, § 6127; R. S. 1933 & C. 1943, 94-0-6.

1. Mayor's deed.

The mayor's deed, executed under the authority of this section, need not be witnessed. Kinney v. Lewis, 2 U. 512, 517; Townsend v. Hooper, 2 U. 548, aff'd 109 U. S. 504, 27 L. Ed. 1012, 3 S. Ct. 357.

2. Title of grantee.

Grantees were held to have acquired fee simple title to specified lots in designated blocks as platted in the North Ogden survey or the townsite survey. Where there is a recorded plat, the conveyance of land by designation of lot number and block number and name of the plat or subdivision passes the title of the grantors the same as if such lots had been described by metes and bounds. Hall v. North Ogden City, 109 U. 304, 166 P. 2d 221, applying Territorial Townsite Act. Judgment set aside on rehearing 109 U. 325, 175 P. 2d 703.

Collateral References.

Public Lands⇐39(5).
73 C.J.S. Public Lands § 68.

57-7-7. When judge is claimant of lands.—If the district judge shall be a claimant of lands in any city or town in his county, he may file the statement required in section 57-7-3 in the district court of an adjoining district, and a copy of the statement in that of his own county. The judge of the district court of the adjoining county shall then proceed as provided for in sections 57-7-4 or 57-7-5, as the case may be; and he shall, moreover, give notice to the city commissioners or mayor of such city or the president of the board of trustees of such town, or, in case of an unincorporated town, to the justice of the peace of the precinct in which such town may be situated. The court shall thereafter proceed as in other cases provided for in this title, and a deed to the land shall be made to the party entitled thereto.

History: R. S. 1898 & C. L. 1907, § 2707; C. L. 1917, § 6128; R. S. 1933 & C. 1943, 94-0-7.

Compiler's Note.

The references in this section to "section 57-7-3" and "sections 57-7-4 or 57-7-5" appeared in Code 1943 as "section 94-0-3" and "sections 94-0-4 or 94-0-5."

Collateral References.

Public Lands⇐39(6).
73 C.J.S. Public Lands § 66.

57-7-8. When city or town officer is claimant of lands.—If a city commissioner or the mayor of any city or the president of the board of trustees of any town shall be a claimant of lands in such city or town, the recorder or the clerk thereof, as the case may be, shall, upon the certificate of the district court made as in the case of other claimants, execute a deed of conveyance to such claimant for the lands finally adjudged to him by the court.

History: R. S. 1898 & C. L. 1907, § 2709; C. L. 1917, § 6130; R. S. 1933 & C. 1943, 94-0-8.

Collateral References.

Public Lands⇐39(8).
73 C.J.S. Public Lands § 68.

57-7-9. Change of venue.—A change of venue as in actions at law shall be allowed in all cases arising under this title.

History: R. S. 1898 & C. L. 1907, § 2710; C. L. 1917, § 6131; R. S. 1933 & C. 1943, 94-0-9.

Collateral References.

Public Lands⇐39(1).
73 C.J.S. Public Lands § 57.

Cross-Reference.

Change of venue, 78-13-8 to 78-13-11.

57-7-10. Statement of expenses.—Within thirty days after the expiration of the six months prescribed in section 57-7-3 for filing statements the corporate authorities, or the judge, and the board of county commissioners shall render in writing a true account of all moneys expended in the acquisition of the title to the land and in the administration or execution of the trust up to that time, including purchase money, necessary traveling expenses, and the costs for posting and publishing notices. Such account shall be filed in the office of the clerk of the district court of the county in which such city or town may be situated, and shall during ordinary business hours be open for inspection to all persons interested.

History: R. S. 1898 & C. L. 1907, § 2711; C. L. 1917, § 6132; R. S. 1933 & C. 1943, 94-0-10.

Compiler's Note.

The reference in this section to "section

57-7-3" appeared in Code 1943 as "section 94-0-3."

Collateral References.
Public Lands⇐39(5).
73 C.J.S. Public Lands § 62.

57-7-11. Payment to be made before conveyance.—Before the corporate authorities or judge shall be required to execute, acknowledge or deliver any deed of conveyance to any person adjudged to be entitled thereto such person shall pay or tender to the city commissioners, the mayor, the president of the board of trustees or the judge, as the case may be, the sum of money chargeable on the land to be conveyed by such deed. To ascertain the sum chargeable, streets and public grounds must be deducted from all the land entered, and then such sum shall be the proportionate costs of the land conveyed and the proportionate expenses thereof, with interest together with a reasonable charge for the preparation, execution and acknowledgment of the deed.

History: R. S. 1898 & C. L. 1907, § 2712; C. L. 1917, § 6133; R. S. 1933 & C. 1943, 94-0-11.

1. In general.

The origin and history of this section from C. L. 1876, § 1173, is given in Hall v. North Ogden City, 109 U. 304, 166 P. 2d 221, 223, judgment set aside on rehearing 109 U. 325, 175 P. 2d 703.

2. Construction and application.

This section clearly indicates that the legislature never intended any title to be acquired to the streets laid out on the plat of a townsite. Hall v. North Ogden City, 109 U. 304, 166 P. 2d 221, applying § 1173, Act of Feb. 17, 1869 (C. L. § 1173). Judgment set aside on rehearing 109 U. 325, 175 P. 2d 703.

Collateral References.
Public Lands⇐39(5).
73 C.J.S. Public Lands § 68.

57-7-12. Full payment to be made within six months—Lien for nonpayment—Sale to satisfy.—Full payment for land shall be made to the district judge, the city commissioners, the mayor or the president of the board of trustees, as the case may be, within six months after the certificate is issued to the claimant. In case of nonpayment within the time herein specified, the amount due shall be deemed a judgment lien upon the land claimed, and the judge, the city commissioners, the mayor or the president of the board of trustees, as the case may be, shall proceed to sell it by sheriff's sale in the same manner as land is sold under execution, subject, however, to redemption as provided by law.

History: R. S. 1898 & C. L. 1907, § 2713; C. L. 1917, § 6134; R. S. 1933 & C. 1943, 94-0-12.

Collateral References.
Public Lands⇐39(1).
73 C.J.S. Public Lands § 57.

Cross-Reference.
Execution sales, 78-23-1 et seq.

57-7-13. Errors in measurement not to invalidate proceedings.—Errors in measurement or computation shall not invalidate any proceedings under this title.

History: R. S. 1898 & C. L. 1907, § 2714; C. L. 1917, § 6135; R. S. 1933 & C. 1943, 94-0-13.

Collateral References.
Public Lands⇐39(1).
73 C.J.S. Public Lands § 57.

57-7-14. Death of officer—Authority to complete trust vests in successor.—In case of death or disability of the district judge, the city commissioners, the mayor or the president of the board of trustees before the

complete execution of the trust, the same shall vest in their successors in office.

History: R. S. 1898 & C. L. 1907, § 2715; C. L. 1917, § 6136; R. S. 1933 & C. 1943, 94-0-14.

1. Construction and application.

The Territorial Townsite Act provided that in the event of death of the judge before complete execution of the trust, title vests in his successor in office who is charged with the duty of executing the trust; that is, to convey to the corporate entity when the town is incorporated such streets and other parcels reserved for public use. The district judge sitting in probate is the successor in office to the territorial probate judge. Hall v. North Ogden City, 109 U. 304, 166 P. 2d 221, 224, judgment set aside on rehearing 109 U. 325, 175 P. 2d 703.

Collateral References.

Public Lands⇐39(5).
73 C.J.S. Public Lands § 62.

57-7-15. Disposition of unclaimed lands.—If there shall remain any unclaimed lands within such city or town after the expiration of six months from the publication of the notice provided for in section 57-7-2, the city commissioners, the mayor or the president of the board of trustees, in cases where lands have been entered for a municipal corporation, or the district judge, in cases where lands have been entered in trust by him, shall cause the same to be surveyed and platted into suitable blocks, lots, streets and alleys. A certified plat of such surveyed lands shall be filed for record in the office of the county recorder of the county.

History: R. S. 1898 & C. L. 1907, §§ 2716, 2718; C. L. 1917, §§ 6137, 6139; R. S. 1933 & C. 1943, 94-0-15.

Compiler's Note.

The reference in this section to "section 57-7-2" appeared in Code 1943 as "section 94-0-2."

Collateral References.

Public Lands⇐39(5).
73 C.J.S. Public Lands § 62.

57-7-16. Duties of municipal officials.—The city commissioners, the mayor, the president of the board of trustees or district judge may sell or cause to be sold such blocks or lots at public auction to the highest bidder for cash, after public notice of the time and place of such sale published at least forty days in some newspaper published in the county, if there is any, otherwise in a newspaper having general circulation in the county. If any of such lands remain unsold for want of a bidder, the city commissioners, the mayor, the president of the board of trustees or district judge may sell or cause the same to be sold at public or private sale, on such terms as may be deemed for the best interest of the city or town; provided, that none of such lands shall be sold for less than $5 per acre.

History: R. S. 1898 & C. L. 1907, §§ 2716, 2717; C. L. 1917, §§ 6137, 6138; R. S. 1933 & C. 1943, 94-0-16.

1. Remedies.

Anyone claiming to have been unjustly or unfairly treated by the manner in which this section was administered may go into equity and assert his rights. Linck v. Salt Lake City, 6 U. 109, 21 P. 459.

Collateral References.

Public Lands⇐39(5).
73 C.J.S. Public Lands § 62.

57-7-17. Reservation of lands for public uses.—Lots or parcels of land necessary for streets, public squares, parks, schoolhouses, hospitals, asylums, fire engine and hose houses, pesthouses, state or other public buildings, or public use, may be reserved by the city commissioners, the mayor, the president of the board of trustees or the district judge, as

the case may be; and he may execute and deliver to the proper party a deed for any property set aside for such purposes.

History: R. S. 1898 & C. L. 1907, § 2718; C. L. 1917, § 6139; R. S. 1933 & C. 1943, 94-0-17.

1. Prospective operation of statute.

The fact that North Ogden was not incorporated until 1934 could not alter the effect of the statute, for provision was specifically made for future incorporation. Upon incorporation, the town became entitled to a deed of conveyance from the successor in office to the probate judge, who received title in the first instance, to execute the trust and to vest in the municipal corporation the fee simple title to all streets, lanes, avenues, parks, commons and public grounds designated on the plat which were not vacated by proper authority. Hall v. North Ogden City, 109 U. 304, 166 P. 2d 221, 224, applying Territorial Townsite Act. Judgment set aside on rehearing 109 U. 325, 175 P. 2d 703.

2. Necessity of townsite having streets.

By sections 1173 and 1174, C. L. 1876, legislature recognized the necessity of having streets, parks and other public grounds, and authorized the corporate authorities to designate such grounds, as were at the time of the entry being so used, for public use and to hold the title thereto for such public use absolutely. But that did not authorize the corporate authorities to designate for public use lands, which at the time of the entry were being occupied and used for private purposes, and thereafter hold the title thereto absolutely without the consent of the occupant. We do not believe that the legislature so intended. A provision to that effect would be contrary to the provisions of the Townsite Act and therefore void. Hall v. North Ogden City, 109 U. 325, 175 P. 2d 703, setting aside on rehearing judgment in 109 U. 304, 166 P. 2d 221.

3. Title to streets.

Before officer entering the land conveys title to the municipal corporation, it is held by him in trust for a public purpose or use. Furthermore, there can be no adverse possession of the streets, nor may title to the streets be acquired by adverse possession. Hall v. North Ogden City, 109 U. 304, 166 P. 2d 221, 225, applying Territorial Townsite Act. Judgment set aside on rehearing 109 U. 325, 175 P. 2d 703.

4. Streets in North Ogden.

None of the original settlers in North Ogden acquired the fee in the streets, in view of the express language of the Territorial Townsite Act, for the act specifically provides that the streets, lanes, avenues, alleys, parks, commons and public grounds shall vest in and be held by the corporation absolutely, "and shall not be claimed adversely by any person or persons whatsoever; and the judge of probate who shall have entered any lands in trust for any town or city which may afterwards become incorporated, shall, under the same conditions, convey by deed to the corporation thereof the lands designated for the use of the public as aforesaid." Hall v. North Ogden City, 109 U. 304, 166 P. 2d 221, 224, applying Territorial Townsite Act. Judgment set aside on rehearing 109 U. 325, 175 P. 2d 703.

5. Title to streets in North Ogden.

The adjudication of all claims under the Territorial Townsite Act was with reference to lots and blocks in the plat of North Ogden, and such adjudications and the deeds executed pursuant thereto did not operate to vest in the owners of the lots, any fee in the streets. For any person to have acquired title to the streets, such acquisition of title would have necessarily been based on something apart from and subsequent to the adjudications of ownership under the Territorial Townsite Act. Hall v. North Ogden City, 109 U. 304, 166 P. 2d 221, 224, applying Territorial Townsite Act. Judgment set aside on rehearing 109 U. 325, 175 P. 2d 703, holding, however, that there was no adjudication of the occupancy or ownership of the lands there in controversy.

Collateral References.

Public Lands⇔39(5).
73 C.J.S. Public Lands § 62.

57-7-18. Disposition of proceeds of sales.—All moneys arising from the sale of lands, after deducting the costs and charges of such sales, shall be paid into the city or town treasury in cases where such lands have been entered in trust by corporate authority, or into the county treasury in cases where such lands have been entered in trust by the district judge;

and the same shall be set apart and applied by the city commissioners or city council, or by the board of trustees of an incorporated town, or by the board of county commissioners in case of an unincorporated town, for the improvement of public squares and streets, the construction of sewers or procuring a supply of water for the use and benefit of the inhabitants of the city or town.

History: R. S. 1898 & C. L. 1907, § 2719; C. L. 1917, § 6140; R. S. 1933 & C. 1943, 94-0-18.

Collateral References.

Public Lands⊂=39(5).

73 C.J.S. Public Lands § 62.

57-7-19. Possession for ten years entitles claimant to deed.—Whenever any lot, piece or parcel of land shall have passed from the United States to the district judge of any county in this state or to the probate judge of any county in the late territory of Utah, under and by virtue of the provisions of an Act of Congress entitled "An act for the relief of the inhabitants of cities and towns upon the public lands," approved March 2, 1867, or any amendments thereto, and there is no record of any conveyance from such judge or his successor in office to the claimants thereof, any person, who by himself or by or through his predecessors in interest shall have had continuous and exclusive possession of such lot, piece of parcel of land for the period of ten years before the filing of the petition hereinafter mentioned and who shall have paid the taxes thereon during said time, shall be deemed the rightful owner of such land, and it shall be conclusively presumed that he has complied with all of the provisions of law for obtaining title thereto; and such person may at any time apply to the judge of the district court of the county wherein said land may be situated for a conveyance of the legal title to such land to him, and such judge of the district court is hereby vested with power and authority to execute such conveyance and carry out the trust, and he shall execute a conveyance to such person of such lot, piece or parcel of land without any expense to such person, except the ordinary costs of court. Such conveyance, when so executed by any judge of the district court, shall pass to such person all the right, title and interest so held in trust to such lot, piece or parcel of land to all intents and purposes and with the same effect as if a proper conveyance had been executed after proper proceedings in the manner provided by law.

History: L. 1915, ch. 90, § 1; C. L. 1917, § 6141; R. S. 1933 & C. 1943, 94-0-19.

1. When interests of occupants attach.

Under the Act of Congress of March 2, 1867 (14 Stat. 541), the interests of the occupants attach simultaneously with the making of a townsite entry, and no person who may have occupied land on the townsite previous thereto, or may occupy such lands thereafter, but who was not a settler and occupant at the time of the entry, is a beneficiary under the act, nor can such person derive any benefit directly by reason of the entry. Lockwitz v. Larson, 16 U. 275, 52 P. 279.

2. Townsite entry under Act of Congress.

By the term "entry," under the act, is meant the filing of an application by the proper officer with the register of the land office, and proof showing the performance of the statutory conditions respecting the settlement and occupancy of the land as a townsite. Lockwitz v. Larson, 16 U. 275, 52 P. 279.

No delay on the part of the government in allowing the entry can affect the rights of those who were bona fide occupants at the time of filing the application and proof, or of those claiming through such occupants, provided the entry is ultimately made on the proof submitted with the application. Lockwitz v. Larson, 16 U. 275, 52 P. 279.

3. **Relationship between officer and occupant.**

The officer who enters the land is the trustee, and the occupants are the cestuis que trustent, who are entitled to have the trust executed, and the land disposed of, under such rules and regulations as the state or territory where the land is situated may prescribe. The legislature of Utah has enacted the necessary rules and regulations for the disposal of the land which may be so entered, and has provided that the lots shall be conveyed to the rightful owner of possession, occupant or occupants, or to such person as might be entitled to the possession or occupancy. Hall v. North Ogden City, 109 U. 304, 166 P. 2d 221, following Holland v. Buchanan, 19 U. 11, 56 P. 561, 562, which latter case followed Lockwitz v. Larson, 16 U. 275, 52 P. 279. Judgment set aside on rehearing 109 U. 325, 175 P. 2d 703.

Collateral References.

Public Lands⇐39(8).
73 C.J.S. Public Lands § 67.